IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 596 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH MOHANBHAI RATHOD

Versus

PRESIDING OFFICER & ASSISTANT COMMISSIONER

Appearance:

1. Special Criminal Application No. 596 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR ANIL S DAVE for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

RULE NOT RECD BACK for Respondent No. 3

MR RC KODEKAR, APP for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/07/2003

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 8-4-2002 passed by the Deputy Police Commissioner, Zone-I, Ahmedabad City, Ahmedabad as also the order dated 8-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar.

2. The facts in short are that a notice dated 14-9-2001 was issued to the petitioner to show cause as to why he may not be externed under Sec.59 of the Bombay Police Act for a term of two years from the limits of Ahmedabad City Police Commissioner and other adjoining districts namely, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana. The petitioner filed his reply on 10-10-2001. Thereafter, order dated 8-4-2002 was passed by the Deputy Police Commissioner, Zone-I, Ahmedabad City, Ahmedabad externing the petitioner from the aforesaid districts. It is the case of the petitioner that he has not been given any opportunity of hearing to defend his case. An appeal preferred before the appellate authority being A.No.68 of 2002 was rejected on 8-8-2002 which is giving rise to the present petition.

3. Heard learned advocate for the petitioner and learned APP for the State.

4. Learned advocate for the petitioner has raised many contentions in the petition. But at the time of arguments, she has restricted only on the point of show-cause notice and argued that the show-cause notice does not disclose the reason for externing the petitioner and hence, the ground which has been shown in the order is vague and authority has not considered the defence of the petitioner. She has taken me through show cause notice and the order passed by both the authorities. She has relied upon the case of Mustufamiya Pirsahedmiya Saiyed Vs. State of Gujarat and Another, reported in 1999(1) G.L.H. 913 wherein it has been held by our High Court at head note (A) as under:

> "(A) Bombay Police Act, 1951-S.59-Externment--Show-cause notice--C.R.No. 52/93 shown pending, but petitioner was acquitted on 23.5.1997--Show-cause notice dated 30.5.1998--Acquittal on benefit of doubt--Acquittal is acquittal, whether giving benefit of doubt or on finding that prosecution failed to establish the charge beyond doubt--Held, show-cause notice was mechanically issued."

It appears that the externee has not been given any opportunity of hearing to defend his case and since vague grounds are given in the show-cause notice, in view of the above reported judgment of this Court, the orders require interference. Since the petitioner succeeds only on one point, he does not press other grounds.

5. In view of the above, the petition is allowed. Order dated 8-4-2002 passed by the Deputy Police Commissioner, Zone-I, Ahmedabad City, Ahmedabad as also the order dated 8-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, against the externee are quashed and set aside. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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